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HOUSE BILL 600

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

John A. Heaton

AN ACT

RELATING TO TAXATION; PROVIDING FOR THE ANGEL INVESTMENT CREDIT
FOR INVESTMENT IN CERTAIN BUSINESSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Income Tax Act is enacted
to read:

"~~[NEW MATERIAL]~~ ANGEL INVESTMENT CREDIT.--

A. A taxpayer who files a New Mexico income tax
return, is not a dependent of another taxpayer, is an
accredited investor and makes a qualified investment may claim
a credit in an amount not to exceed twenty-five percent of not
more than one hundred thousand dollars (\$100,000) of the
qualified investment. The tax credit provided in this section
shall be known as the "angel investment credit".

B. A taxpayer may claim the angel investment credit

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1 for not more than three qualified investments in a taxable
2 year; provided that each investment is in a different qualified
3 business. A taxpayer may claim the angel investment credit for
4 qualified investments made in the same qualified business or
5 successor of that business for not more than three taxable
6 years. The angel investment credit shall not exceed twenty-
7 five thousand dollars (\$25,000) for each qualified investment
8 by the taxpayer.

9 C. A taxpayer may claim the angel investment credit
10 no later than one year following the end of the calendar year
11 in which the qualified investment was made; provided that a
12 claim for the credit may not be made or allowed with respect to
13 any investment made after December 31, 2011.

14 D. A taxpayer shall apply for certification of
15 eligibility for the angel investment credit from the economic
16 development department. Applications shall be considered in
17 the order received. If the department determines that the
18 taxpayer is a qualified investor and the investment is a
19 qualified investment, it shall issue a certificate of
20 eligibility to the taxpayer, subject to the limitation in
21 Subsection E of this section. The certificate shall be dated
22 and shall include a calculation of the amount of the angel
23 investment credit for which the taxpayer is eligible. The
24 economic development department may issue rules governing the
25 procedure for administering the provisions of this subsection.

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1 E. The economic development department may issue a
2 certificate of eligibility pursuant to Subsection D of this
3 section only if the total amount of angel investment credits
4 represented by certificates of eligibility issued by the
5 economic development department in any calendar year will not
6 exceed seven hundred fifty thousand dollars (\$750,000). If the
7 applications for certificates of eligibility for angel
8 investment credits represent an aggregate amount exceeding
9 seven hundred fifty thousand dollars (\$750,000) for any
10 calendar year, certificates shall be issued in the order that
11 the applications were received. The excess applications that
12 would have been certified, but for the limit imposed by this
13 subsection, shall be certified, subject to the same limit, in
14 subsequent calendar years.

15 F. To claim the angel investment credit, the
16 taxpayer must provide to the taxation and revenue department a
17 certificate of eligibility issued by the economic development
18 department pursuant to Subsection D of this section and any
19 other information the taxation and revenue department may
20 require to determine the amount of the tax credit due the
21 taxpayer. If the requirements of this section have been
22 complied with, the taxation and revenue department shall
23 approve the claim for the credit.

24 G. A taxpayer who otherwise qualifies for and
25 claims a credit pursuant to this section for a qualified

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1 investment made by a partnership or other business association
2 of which the taxpayer is a member may claim a credit only in
3 proportion to the taxpayer's interest in the partnership or
4 business association. The total credit claimed in the
5 aggregate by all members of the partnership or business
6 association in a taxable year with respect to a qualified
7 investment shall not exceed twenty-five thousand dollars
8 (\$25,000).

9 H. A husband and wife who file separate returns for
10 a taxable year in which they could have filed a joint return
11 may each claim one-half of the credit that would have been
12 allowed on a joint return.

13 I. The angel investment credit may only be deducted
14 from the taxpayer's income tax liability. Any portion of the
15 tax credit provided by this section that remains unused at the
16 end of the taxpayer's taxable year may be carried forward for
17 three consecutive years.

18 J. As used in this section:

19 (1) "accredited investor" means a person who
20 is an accredited investor within the meaning of Rule 501 issued
21 by the federal securities and exchange commission pursuant to
22 the federal Securities Act of 1933, as amended;

23 (2) "business" means a corporation, general
24 partnership, limited partnership, limited liability company or
25 other similar entity, but excludes an entity that is a

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1 government or a nonprofit organization designated as such by
2 the federal government or any state;

3 (3) "equity" means common or preferred stock
4 of a corporation, a partnership interest in a limited
5 partnership or a membership interest in a limited liability
6 company, including debt subject to an option in favor of the
7 creditor to convert the debt into common or preferred stock, a
8 partnership interest or a membership interest;

9 (4) "high-technology research" means research:

10 (a) that is undertaken for the purpose
11 of discovering information that is technological in nature and
12 the application of which is intended to be useful in the
13 development of a new or improved business component of the
14 qualified business; and

15 (b) substantially all of the activities
16 of which constitute elements of a process or experimentation
17 related to a new or improved function, performance, reliability
18 or quality, but not related to style, taste or cosmetic or
19 seasonal design factors;

20 (5) "manufacturing" means combining or
21 processing components or materials to increase their value for
22 sale in the ordinary course of business, but does not include:

23 (a) construction;

24 (b) farming;

25 (c) processing natural resources,

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1 including hydrocarbons; or

2 (d) preparing meals for immediate
3 consumption, on- or off-premises;

4 (6) "qualified business" means a business
5 that:

6 (a) maintains its principal place of
7 business in New Mexico;

8 (b) engages in high-technology research
9 or manufacturing activities in New Mexico;

10 (c) is not primarily engaged in or is
11 not primarily organized as any of the following types of
12 businesses: credit or finance services, including banks,
13 savings and loan associations, credit unions, small loan
14 companies or title loan companies; financial brokering or
15 investment; professional services, including accounting, legal
16 services, engineering and any other service the practice of
17 which requires a license; insurance; real estate; construction
18 or construction contracting; consulting or brokering; mining;
19 wholesale or retail trade; providing utility service, including
20 water, sewerage, electricity, natural gas, propane or butane;
21 publishing, including publishing newspapers or other
22 periodicals; broadcasting; or providing internet operating
23 services;

24 (d) has not issued securities registered
25 pursuant to Section 6 of the federal Securities Act of 1933, as

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1 amended; has not issued securities traded on a national
2 securities exchange; is not subject to reporting requirements
3 of the federal Securities Exchange Act of 1934, as amended; and
4 is not registered pursuant to the federal Investment Company
5 Act of 1940, as amended, at the time of the investment;

6 (e) has one hundred or fewer employees
7 calculated on a full-time-equivalent basis at the time of the
8 investment; and

9 (f) has not had gross revenues in excess
10 of five million dollars (\$5,000,000) in any fiscal year ending
11 on or before the date of the investment; and

12 (7) "qualified investment" means a cash
13 investment in a qualified business for equity, but does not
14 include an investment by a taxpayer if the taxpayer, a member
15 of the taxpayer's immediate family or an entity affiliated with
16 the taxpayer receives compensation from the qualified business
17 in exchange for services provided to the qualified business
18 within one year of investment in the qualified business."

19 Section 2. TEMPORARY PROVISION.--In taxable years 2013
20 through 2015, a taxpayer may carry forward amounts resulting
21 from angel investment credits claimed and approved for
22 qualified investments made in the calendar year 2009, 2010 or
23 2011.

24 Section 3. DELAYED REPEAL.--Section 1 of this act is
25 repealed effective January 1, 2013.

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